

CHAPTER NO. 920

SENATE BILL NO. 3661

By Haynes, Finney

Substituted for: House Bill No. 3946

By Briley, Sherry Jones, Langster, Moore, Pruitt, Ferguson, Cobb, Harmon, Fraley, Sontany, Hargrove, Brown, Rinks, Favors, Mr. Speaker Naifeh, Marrero, Lois DeBerry, DuBois

AN ACT to amend Tennessee Code Annotated, Title 36; Title 39 and Title 40, relative to violations of orders of protection and other protective orders and conditions of release.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, Part 1, is amended by adding the following as a new section:

§ 39-13-113.

(a) It is an offense to knowingly violate:

(1) An order of protection issued pursuant to Title 36, Chapter 3, Part 6;
or

(2) A restraining order issued to a victim as defined in § 36-3-601(11).

(b) A person violating this section may be arrested with or without a warrant as provided in § 36-3-611, and any such arrest shall be conducted in accordance with the requirements of § 36-3-619.

(c) A person who is arrested for a violation of this section shall be considered within the provisions of § 40-11-150(a) and subject to the 12-hour hold period authorized by § 40-11-150(h).

(d) After a person has been arrested for a violation of this section, the arresting officer shall inform the victim that the person has been arrested and that such person may be eligible to post bond for the offense and be released until the date of trial for the offense.

(e) Neither an arrest nor the issuance of a warrant or capias for a violation of this section shall in any way affect the validity or enforceability of any order of protection or restraining order.

(f) In order to constitute a violation of this section:

(1) The person must have received notice of the request for an order of protection or restraining order;

(2) The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and

(3) The court made specific findings of fact in the order of protection or restraining order that the person had committed abuse as defined in § 36-3-601(1).

(g) A violation of this section is a Class A misdemeanor, and any sentence imposed shall be served consecutively to the sentence for any other offense that is based in whole or in part on the same factual allegations, unless the sentencing judge or magistrate specifically orders the sentences for any such offenses arising out of the same facts to be served concurrently.

SECTION 2. Tennessee Code Annotated, Section 36-3-612, is amended by deleting the section in its entirety and substituting instead the following:

(a) A person arrested for the violation of an order of protection issued pursuant to this part or a restraining order or court-approved consent agreement, shall be taken before a magistrate or the court having jurisdiction in the cause without unnecessary delay to answer a charge of contempt for violation of the order of protection, restraining order or court-approved consent agreement, and the court shall:

(1) Notify the clerk of the court having jurisdiction in the cause to set a time certain for a hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement within ten (10) working days after arrest, unless extended by the court on the motion of the arrested person;

(2) Set a reasonable bond pending the hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement; and

(3) Notify the person to whom the order of protection, restraining order or court-approved consent agreement was issued to protect and direct the party to show cause why a contempt order should issue.

(b) Either the court that originally issued the order of protection or restraining order or a court having jurisdiction over orders of protection or restraining orders in the county where the alleged violation of the order occurred shall have the authority and jurisdiction to conduct the contempt hearing required by subsection (a). If the violation is of a court-approved consent agreement, the same court that approved such agreement shall conduct the contempt hearing for any alleged violation of it. If the court conducting the contempt hearing is not the same court that originally issued the order of protection or restraining order, the court conducting the hearing shall have the same authority to punish as contempt a violation of the order of protection or restraining order as the court originally issuing such order.

SECTION 3. Tennessee Code Annotated, Section 36-3-615, is amended by deleting subsection (a) and substituting instead the following:

(a) After a person has been arrested for assault pursuant to § 39-13-101, aggravated assault pursuant to § 39-13-102, against a victim as defined in § 36-3-601(11), domestic assault pursuant to § 39-13-111, or violation of a protective order pursuant to § 39-13-113, the arresting officer shall inform the victim that the person arrested may be eligible to post bond for the offense and be released until the date of trial for the offense.

SECTION 4. Tennessee Code Annotated, Section 39-17-1316, is amended by adding the following to the end of subsection (a)(1):

For purposes of this subsection, the offense of violation of a protective order as prohibited by § 39-13-113 shall be considered a “misdemeanor crime of domestic violence” for purposes of 18 U.S.C. § 921.

SECTION 5. Tennessee Code Annotated, Section 40-11-150, is amended by deleting subsection (i) and substituting instead the following:

(i)(1) A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant as provided in § 40-7-103(b). If the violation of the condition of release also constitutes the offense of violation of a protective order as prohibited by § 39-13-113, the person shall be charged with such offense, and the bail of the person violating the condition of release may be revoked by the court having jurisdiction of the offense.

(2) If the violation of the condition or release does not also constitute a violation of § 39-13-113, the release condition violation shall be punished as contempt of the court imposing the conditions, and the bail of the person violating the condition of release may be revoked.

SECTION 6. Tennessee Code Annotated, Section 40-11-150, is amended by deleting subsection (k)(3) and substituting instead the following:


(3)(A) A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant as provided in § 40-7-103(b). If the violation of the condition of release also constitutes the offense of violation of a protective order as prohibited by § 39-13-113, the person shall be charged with such offense, and the bail of the person violating the condition of release may be revoked by the court having jurisdiction of the offense.

(B) If the violation of the condition of release does not also constitute a violation of § 39-13-113, the release condition violation shall be punished as contempt of the court imposing the conditions, and the bail of the person violating the condition of release may be revoked.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 26, 2006


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 20th day of June 2006


PHIL BREDESEN, GOVERNOR